IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12169 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHMAD SAFIQ M SAIYED

Versus

STATE OF GUJARAT

Appearance:

MR HARDIK C RAWAL for Petitioner

Ms. Manisha Lavkumar, learned AGP for respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 05/03/2001

ORAL JUDGEMENT

Rule. Ms. Manisha Lavkumar, learned AGP, waives service of rule on behalf of respondents. On the request of both the sides the matter was taken up for final hearing right today.

Through this petition the petitioner has prayed

that the order dated 15.9.2000 (Annexure "A") be quashed and set aside and the respondents be directed to give appointment to the petitioner on compassionate ground on the post of Junior Clerk. The petitioner sought appointment on compassionate ground as his father had died while being in service. He was nominated by his mother for such compassionate appointment but this compassionate appointment was denied to the petitioner by the impugned order dated 15.9.2000 on the ground that his family income exceeds Rs.2500/-. The learned counsel for the petitioner has submitted that for the purpose of calculating the total amount of the income of the family, the family pension, which his mother is getting as the widow, cannot be taken into consideration.

Learned AGP submits that according to the GAD Circular dated 1.9.97 and the guidelines dated 24.2.99 the income of the family has been computed in case of the petitioner. Be that as it may, the fact remains that this question has been considered by this Court earlier in more than one cases and in Special Civil Application No.11020/93 it was considered that the income as family pension cannot be included in the income of the family for the purpose of computing the limit of Rs.2500/-. Mr. Raval, learned counsel for the petitioner, has placed reliance on a decision of this court in Special Civil Application No.11020/93 decided on 1.2.99, which was upheld by the Division Bench in Letters Patent Appeal No.739/99 decided on 13.8.99.The petitioner has been receiving the family pension of Rs.3450-- + Rs.552/-- as DA + Rs.100/-- as medical allowance making the total to be Rs.4102/-- since June 1998 and thus the income exceeds Rs.2500/--. The petitioner has submitted that there is no income of the family other than the family pension, as aforesaid and, therefore, it cannot be said that the income of the family exceeds Rs.2500/-- because the amount which is being received as family pension cannot be computed for the purpose of caculating outer limit. It is also given out that now the income criteria and the ceiling on the limit has totally been done away by the State Government itself.

In the facts and circumstances of this case, this petition deserves to be allowed. The impugned order dated 15.9.2000 cannot be sustained in the eye of law, the same is hereby set aside and the respondents are directed to consider the petitioner's case for appointment on compassionate ground against a suitable post in accordance with law ignoring the factum of the amount of family pension. Appropriate orders shall be passed within a period of four weeks from the date the

certified copy of this order is served upon the concerned authorities by either of the parties. Accordingly this Special Civil Application is allowed and the rule is made absolute with no order as to costs.

(M.R.Calla,J)